person is quite entitled to say: 'I do not wish to say anything except that I am innocent'."

With regard to the point that the appellant "was a man with a criminal record", section 54 of the Evidence Ordinance reads as follows:—

"In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant."

Here no evidence was given that the appellant had a good character and the section means just what it says.

It is not possible to say exactly what weight the trial Judge attached to these considerations of the appellant reserving his defence at the Preliminary Inquiry and being a man of bad character. It is probable, however, that he attached very considerable weight to them because he has dealt with them at considerable length and with considerable emphasis in his Grounds of Judgment. In the circumstances it is at the lowest probable that if he had disregarded these considerations as he should have done he would not have called upon the appellant to make his defence and would have discharged him at the close of the case for the prosecution. In the circumstances we were of the opinion that we had no option but to set the conviction aside.

Conviction set aside.

TANGAMMAH CUMARASAMY v. CHAIRMAN, TOWN COUNCIL, TAIPING

[A.C.J. (Good J.) August 14, 1958]

[Ipoh — Civil Appeal No. 270 of 1957]

Landlord and Tenant — Annual value — Determination of — Controlled premises — Uncontrolled premises on land subject to restrictive conditions as to letting — Principles applicable — Control of Rent Ordinance, 1956 — Town Boards Enactment (Cap. 137).

Local Authority — Rates and rating — Assessment.

The sole test of ascertaining the "annual value" is "the estimated gross annual rent at which the holding might reasonably be expected to let from year to year." The Rating authorities must have regard to what *a* (not *the*) hypothetical tenant might reasonably be expected to pay bearing at the same time in mind the restrictions "created or imposed either by its natural position or by the artificial conditions" of a statute, but not restrictions created or imposed by contract between a landlord and tenant. The definition "annual value" in the Town Boards Enactment has the effect of constraining the Rating authority to have regard to statutory limitation on the annual rent exigible by the landlord.

The ground of appeal in this case was that the Town Council in assessing the annual value of each of the premises concerned erred in disregarding the provisions of the Control of Rent Ordinance to which all the premises were subject. The question for determination was whether the Control of Rent Ordinance affected the annual value of the premises for the purposes of rating.

Held: (1) where controlled premises have been previously let as a single unit whether such premises are occupied by the owner or a tenant, and the standard rent and permitted increases are known by reference either to a previous letting or to an order of the Rent Assessment Board fixing the maximum recoverable rent, the annual value thereof must be assessed on the basis of such rent.

(2) where such premises have not been previously let as a single unit but occupied either by the owner or his successor in title or jointly by the owner and tenant or tenants, a difficulty, which is a practical and not a legal one, arises from the absence of machinery for determining the maximum recoverable rent which is only determinable by the Rent Assessment Board under section 8(2) of the Control of Rent Ordinance upon an application by either a landlord or tenant or other person interested in respect of an existing tenancy. In such cases the Rating Authority must seek to arrive at a reasonable estimate of the figure at which the rent of the premises would be controlled if they were let;

(3) in the case of uncontrolled premises, where restrictive conditions as to letting are imposed by statute, the land is not struck with sterility; the occupational value to the owner (the hypothetical tenant) must be assessed having regard to the artificial conditions imposed by the State while issuing title.

Cases referred to:—

(1) *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts,* (1922) 2 A.C. 93.

(2) *Rawlance v. Croydon Corporation,* (1952) 2 Q.B. 803; (1952) 2 All E.R. 535.

(3) *Port-of-Spain Corporation v. Gordon, Grant & Co. Ltd.,* (1955) A.C. 389.

(4) *Trimble v. Hill,* (1879), 5 App.Cas. 342, 344, 345.

(5) *Nadarajan Chettiar v. Walauwa Mahatmee & Anor.,* (1950) A.C. 481; 66 T.L.R. (Pt.2) 15, 19, 20.

(6) *Armstrong v. Estate Duty Commissioner,* (1937) A.C. 885; (1937) 2 All E.R. 484.

(7) *Attorney-General of Ontario v. Perry,* (1934) A.C. 477; (1934) All E.R. Rep. 422.

(8) *Commissioners of Inland Revenue v. Forrest,* (1890) A.C. 334.

(9) *Commissioner of Stamps S.S. v. Oei Tjong Swan,* (1933) M.L.J. 107, 109.

(10) *Magor v. Newport Corpn.,* (1952) A.C. 189, 191; (1951) 2 All E.R. 839.

(11) *Grand Trunk Rly. Co. v. Washington,* (1899) A.C. 275, 280.

(12) *Staley v. Castleton Overseers*, (1864), 5 B. & S. 505.
(13) *Port of London Authority v. Orsett Union*, (1920) A.C. 273, 305.
(14) *R. v. West Middlesex Waterworks Co.*, (1859), 28 L.J.M.C. 135, 137.
(15) *R. v. School Board for London*, (1886), 17 Q.B.D. 738.
(16) *Owens College v. Chorlton-upon-Medlock*, (1887), 18 Q.B.D. 403.
(17) *London County Council v. Church Wardens of Parish of Erith & Ors.*, (1893) A.C. 562.
(18) *Davies v. Seisdon Union*, (1908) A.C. 315.
(19) *West Bromwich School Board v. West Bromwich Overseers*, (1884), 13 Q.B.D. 929, 942.
(20) *Jones v. Mersey Docks*, 11 H.L. 443.
(21) *Mayor of Burton-upon-Trent v. Burton-upon-Trent Union*, (1889), 24 Q.B.D. 197.

CONSOLIDATED APPEAL.

J. S. Chabra (*P. Dharmananda* with him) and *Yeoh Cheang Lee* (*Miss Chan Loo Thye* with him) for the appellants.

S. K. Das for the respondent.

Cur. Adv. Vult.

Good J.: — These proceedings consist of 115 appeals, the reference numbers and titles of which are set out in an appendix * to this judgment. The appeals are against a decision of the Taiping Town Council dismissing objections against the assessment list for 1957. All the grounds of appeal, except one, were abandoned. The surviving ground of appeal involves a single question of interpretation which is common to all the appeals. It was, therefore, agreed that for convenience the appeals should be consolidated, and that the common point should be argued at one hearing. I wish to take the opportunity of thanking Counsel for acceding to this course and for the assistance which they have given to the Court by arranging the appeals into appropriate categories for greater clarity and more expeditious disposal.

The categories are as follows (to avoid confusion I have retained the original numbers assigned to them):

A(i) — (80 appeals).

These appeals are in respect of controlled premises occupied by the owner or a tenant of the whole premises, which has been the subject of a previous letting at any time on or after 25th September, 1940, whose standard rent and permitted increases are known by reference either to a prior letting or to an order of the Rent Assessment Board fixing the maximum recoverable rent.

A(iii) — (26 appeals).

These appeals are in respect of controlled premises occupied by the owner or his successor-in-title since the erection of the premises and which have never been let. (One case in this category, Appeal No. 227/57, is to be considered separately, as the title is held under restrictive conditions peculiar to this particular case).

A(iv) — (9 appeals)

These appeals are in respect of controlled premises occupied jointly by the owner and a tenant or tenants where the whole of the premises has not been the subject of a prior letting.

The common ground of appeal is that the Town Council in assessing the annual value of each of these premises erred in disregarding the provisions of the Control of Rent Ordinance, 1956, to which all the premises are subject. The question for determination is whether the Control of Rent Ordinance, 1956, affects the annual value of the premises for the purposes of rating.

The question arose, and was decided by the House of Lords in the negative, whether the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, affects the rateable value of the hereditaments to which the Act applies, in *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts.*[1] That decision was followed by the Court of Appeal in *Rawlance v. Croydon Corporation,*[2] but since the *Poplar* case, though prior in point of time, was decided by the House of Lords it is to that case that reference was principally made in the course of the arguments. The question arose, and was answered by the Judicial Committee of the Privy Council in the affirmative, whether the Rent Restriction Ordinance of Trinidad and Tobago affects the annual rateable value of rateable hereditaments which are subject to Part V of the Port-of-Spain Corporation Ordinance, in the *Port-of-Spain Corporation v. Gordon, Grant & Co. Ltd.*[3]

This Court is bound by decisions of the Privy Council. It is not, as a matter of strict law, bound by the decisions of any other English Court, but the Privy Council on at least two occasions has expressed the opinion, which would apply *a fortiori* to decisions of the House of Lords, that colonial Courts ought to follow the decisions of the Court of Appeal in England on the construction of an English statute *in pari materia* with a colonial statute which they are called upon to interpret (*Trimble v. Hill*[4] and

* Appendix not reproduced.

Nadarajan Chettiar v. Walauwa Mahatmee and Another[5]). This Court is not a colonial Court nor are the Ordinances and Enactments in force in the Federation colonial statutes, but I take the description "colonial" to extend by analogy to the Courts, and the legislation, of any country from whose highest Court an appeal lies to the Privy Council.

The rule which has been followed in this country is that the Courts are bound by the decisions of the Privy Council, and that they are under the strongest compulsion, which is virtually binding, to follow the decisions of the House of Lords.

When it comes to applying the rule in practice, a difficulty is immediately encountered which arises from the necessity of determining the applicability of a decision on the construction of an English statute by first discovering the answer to the question: Are the English statute and the local statute really *in pari materia* at all? If they are entirely different this question does not arise; if they are identical, it arises but is easily answered. It is seldom, however, that the question is so clear-cut, since in many territories, while advantage is taken of English legislation for use as a model for local legislation dealing with the same subject-matter, the local Legislatures do not always follow in every respect the policy of the English model, and the local draftsmen do not always adhere exactly to its wording. When a Court called upon to construe a local statute has its attention drawn to a decision of the Privy Council on the construction of what may conveniently be called a "parallel" statute in another territory, it is at once faced, if it sets out to solve the problem of construction by a comparison of the two statutes, with difficult questions such as: "Is a provision of statute 'A' more similar to the corresponding provision of statute 'B' than it is dissimilar from it, or is it more dissimilar than it is similar?" and "At what point does similarity for the purpose of construction prevail over dissimilarity, and *vice versa*?"

Even when the Legislature of one territory adopts the exact wording of the corresponding statute of another territory a difficulty may arise which is well illustrated in Sir John Beaumont's speech in *Nadarajan Chettiar's case, supra*:

> " Mr. Wilberforce, for the respondents, in the first instance contended that the Legislature in Ceylon by employing in section 2(2) of the Money Lending Ordinance the exact words used in the English Money Lenders Act, must be taken to have accepted the construction placed on these words by Courts of competent jurisdiction in England. He relied on the following rule stated by Lord Justice James in *Ex parte Campbell* (1870) 5 Ch. App. 703, at p. 706): 'Where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them without any alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them.' This rule has been acted on frequently in the English Courts and was approved by the House of Lords in *Barras v. Aberdeen Steam Trawling and Fishing Co., Limited* (49 The Times L.R. 391; (1933) A.C. 402). Probably in suitable cases the rule would be applied in Ceylon, as it has been in India (see *Strimathoo Moothoo Vijia and Others v. Dorasinga Tever* (1875) L.R. 2 I.A. 169). It is, however, one thing to presume that a local Legislature, when re-enacting a former statute, intends to accept the interpretation placed on that statute by local Courts of competent jurisdiction with whose decision the Legislature must be taken to be familiar; it is quite another thing to presume that a Legislature, when it incorporates in a local Act the terms of a foreign statute, intends to accept the interpretation placed on those terms by the Courts of the foreign country with which the local Legislature may or may not be familiar. There is no presumption that the people of Ceylon know the Law of England, and in the absence of any evidence to show that the Legislature of Ceylon at the relevant date knew, or must be taken to have known, decisions of the English Courts under the Money Lenders Act, there is no basis for imputing to the Legislature an intention to accept those decisions."

The appellants rely, for the purposes of their argument, on the *Port-of-Spain* case, *supra*. Mr. S. K. Das, for the respondent, pointed out a number of differences between the Control of Rent Ordinance, 1956, of the Federation of Malaya and the Rent Restriction Ordinance of Trinidad and Tobago, and argued that by reason of those differences the *Port-of-Spain* case has no application to the question for determination here. If it was Mr. Das' intention to submit that because of those differences this Court *could not* follow the *Port-of-Spain* decision, that would be a fallacy in both law and logic. I took his argument, however, to be that because of those differences this Court is not bound by the *Port-of-Spain* decision, and that in the absence of any relevant authority of local application the decision in the *Poplar* case, *supra*, should be followed.

Mr. Das referred me to a number of authorities which lay down principles to be followed, or not to be followed (as the case may be), in interpreting "colonial" statutes: *Armstrong v. Estate Duty Commissioner*,[6] *A. G. Ontario v. Perry*,[7] *Commissioners of Inland Revenue v. Forrest*[8] and *Commissioner of Stamps S.S. v. Oei Tjong Swan*.[9] With respect, however, it seems to me that to adopt Mr. Das'

method of approaching the question could easily lead us into the error against which Lord Macmillan delivered a strongly worded caution in *Commissioner of Stamps S.S. v. Oei Tjong Swan, supra.* The following passage from the judgment emphasises the danger of embarking upon a comparison of "parallel" statutes for the purpose of inferring distinctions of intention from differences in the wording. I quote the words of the noble and learned Lord in this context:

"The difficulty in which the learned Judges find themselves in accounting for the terms of section 73 (2) and (3) consistently with their decision is entirely occasioned by their approach to the problem of construction which the case presents. Instead of first considering the terms of the Ordinance itself, they have at once entered upon an elaborate comparison of its provisions with those of the Imperial Finance Act of 1894, and proceeded to draw inferences from the variations between the Ordinance and the Imperial statute. This is a perilous course to adopt and one which certainly does not commend itself to their Lordships. Decisions of the Imperial Courts on statutes dealing with the same subject matter may often be useful in the interpretation of similar provisions in colonial measures and a comparison between similar measures of the Imperial and the Colonial Legislatures may on occasion be helpful (*Cf. Alcock Ashdown & Co. v. Chief Revenue Authority, Bombay*, 1923, 50 I.A. 227 at p. 238). But it is quite a different thing to institute a textual comparison such as has here been made and to rely on conjectures as to the intention of the draftsman in selecting some and rejecting other provisions of his presumed model."

It is, of course, equally dangerous to infer identity of intention from similarity of the wording. Lord Macnaghten referred to this danger in the case of *Commissioners of Inland Revenue v. Forrest, supra,* where he said:

"The two Acts differ widely in their scope; and even when they happen to deal with the same subject the wording is not the same. It was argued indeed that the language was 'practically identical'; but that expression to my mind involves an assumption that the meaning is the same and an admission that the language is different."

The safe rule of interpretation is to be found in the speech of Lord Simonds in *Magor v. Newport Corporation*[10] where he said:

"The duty of the Court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited."

In a Privy Council case from Canada, *Grand Trunk Railway Company v. Washington,*[11] Sir Henry Strong delivering the judgment of the Judicial Committee said:

"The decision of the Court of Appeal seems to have been influenced by contrasting the Act of Parliament with certain statutes enacted by the Legislature of Ontario for the regulation of provincial railways. As these are enactments emanating from a different legislative body from that which passed the statute to be interpreted and cannot be said to be *in pari materia* with it, their Lordships are unable to see that they ought to have any influence upon the question to be decided arising exclusively upon the Dominion Act and relating only to Dominion railways."

Many other authorities on this aspect of the interpretation of statutes are to be found at pages 124 *ff.* of *Craies* on Statute Law, 5th Edition, the effect of which is to underline the danger of attempting an interpretation of one statute by applying principles which have been laid down by another Court in interpreting a different statute merely because the two statutes have the appearance of being *in pari materia;* but that is not to say that a Court which is called upon to interpret a statute should refuse guidance from a decided case on the interpretation of another statute containing relevant subject-matter, merely because it has been enacted by a different legislature or because it is not completely *in pari materia* with the statute under consideration. The route which the Court should follow in order to arrive at its decision is clearly marked by a long line of judicial signposts. It is, to go to the *ratio decidendi* of the cases in which the question has been decided, and then to determine whether the ingredients of the *ratio decidendi* are present, in the same essential form and unadulterated with foreign ingredients, in the case to be decided.

But before examining the cases, it is necessary to refer briefly to the relevant legislation. The English rating legislation, to which reference must be made for the purposes of the *Poplar* case, is to be found in the Valuation of Property (Metropolis) Act, 1869. Under that Act rates are payable on the rateable value of premises to which the Act applies and the rateable value is the gross value after deducting therefrom the probable annual average cost of repairs, insurance, etc. Gross value is defined in section 3 as:

"The annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rentcharge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent."

The meaning of the words "taking one year with another" is illustrated in *Staley v. Castleton Overseers*[12] where a cotton mill, which had been closed down during the American Civil War because no cotton could be obtained from

America, was sought to be rated as a mill but it was held, while the shortage of cotton continued, to be rateable only as a storehouse for valuable machinery. In that case Blackburn, J., as he then was, said:

"The hypothetical tenant from year to year would give nothing for it as a cotton mill. It is possible that the present state of things will improve and that a tenant could be found who would be willing to take it for a term on a larger rent, reckoning that that supposition will be realised. But that is not the way the probable rent is to be arrived at. That would change the words of the statute, and instead of the words to let 'from year to year' would introduce the words 'for a reasonable term of years'. The result would be that if a man was driving a shaft with the expectation of meeting a valuable vein of minerals, he would be rateable upon some probable value for those minerals before he ever reached them, and though he was deriving no benefit whatever from his labour and expense. The Law is not so, but the legislature intended that the rate should be made upon the rent which might be reasonably expected from a tenant who took the property from year to year, *rebus sic stantibus*. If there be waste land near a large city which is entirely unprofitable, it is not rateable although in after years it might become exceedingly valuable. That was the case in *Att.-Gen. v. Lord Sefton*, where it was held that the duty did not attach in respect of land which at the time of the defendant succeeding to it was unproductive, though it might afterwards be valuable as building land. No doubt if the mill was about to be sold, the rent that a tenant for a term would give for it would very properly be taken into account, but not in ascertaining what a tenant from year to year would give. Deferred and reversionary prospects are not to be taken into account."

The corresponding rating provisions in Trinidad are to be found in section 89(1) of the Port-of-Spain Corporation Ordinance, 1950, which provides as follows:

"In determining the annual rateable value of any rateable hereditament for the purposes of this Ordinance, the Corporation shall, whether such hereditament be actually rented or not, consider in every case what amount of annual rent a tenant may be reasonably expected to pay for such hereditament, having regard to the purpose for which such hereditament is actually used or, in case it is not actually used or occupied, the purpose for which it is reasonably suitable."

It will be observed that in this sub-section the words "taking one year with another" which appear in the English Act of 1869 are not used but the word "annual" itself may have been thought to produce the same effect whether these words are included or not.

Our local rating provisions are to be found in the Town Boards Enactment (F.M.S. Cap. 137) section 28 of which provides that rates may be assessed upon the annual value of holdings, and "annual value" is defined in section 2 as "the estimated gross annual rent at which the holding might reasonably be expected to let from year to year". It will be observed that the draftsman of the Town Boards Enactment was clearly concerned with emphasising the annual nature of the measure to be used in estimating the gross annual rent. The effect of these words in the definition of annual value is that the assessment is to be based on the gross rent at which it is estimated that the holding might reasonably be expected to let if it were being let from year to year, and it is not to be assessed on the rent which might reasonably be obtained, in consideration of future profits or future enhancement of the value of the holding, if the holding were to be let for a term of years.

The relevant rent restriction legislation is to be found in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the Rent Restriction Ordinance of Trinidad and Tobago, and the Control of Rent Ordinance, 1956, of the Federation of Malaya. The scheme of this legislation is basically similar. A standard rent is obtained by freezing the rent at which the premises were let on an arbitrary date, and special provision is made for ascertaining the standard rent where the premises were not so let. In England, Rent Tribunals are established with power to revise standard rents and fix reasonable rents; in Trinidad and the Federation, Rent Assessment Boards are invested with extensive powers in respect of the fixing of standard rents. When the standard rent has been ascertained or fixed, certain permitted increases may be added to it in order to arrive at the rent which is recoverable by the landlord from his tenant. This is called in Trinidad the maximum permitted rent and in the Federation the maximum recoverable rent.

A fundamental distinction exists between the English rating law on the one hand and the rating laws of Trinidad and the Federation on the other in that, in England, the liability to pay the rates falls upon the occupier of the rated premises, whereas in Trinidad and the Federation it falls on the owner. A distinction in the rent restriction legislation which was pointed out in the *Port-of-Spain* case is that in Trinidad the Legislature has made it a punishable offence for the landlord to receive or the tenant to pay a rent in excess of the maximum permitted rent. The Trinidad Ordinance section 10(3) provides:

"If a landlord knowingly receives, or a tenant knowingly pays, any rent which is by this Ordinance made irrecoverable, he shall be guilty of an offence against this Ordinance....."

A similar position would appear to exist in the Federation, for section 3(5) of our Ordinance provides:

"Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars."

The use of the word "person" as distinct from "landlord" would appear to catch the tenant on a criminal charge of abetment of an offence committed by the landlord under section 3(1). There is no corresponding provision in the English Act which, however, takes the same course as the Trinidad and Federation Ordinances in making any rent in excess of the permitted rent irrecoverable from the tenant.

I now come to consider the two cases which are respectively relied on by the parties to these appeals. In the *Poplar* case the appellants were the Assessment Committee of the Metropolitan Borough of Poplar and the respondent was the occupier of a beerhouse situated in the borough which was held under a lease at a rent of £40.0.0. a year, the lessee paying rates and taxes, except the landlord's property tax. The rateable value of the premises on August 3rd, 1914 was £48.0.0. and that being higher than the actual rent obtained by the respondent was, by virtue of section 12(1)(a) of the Act of 1920, the standard rent of the premises. In the valuation list for 1920 the premises were assessed at £112.0.0. as the gross value and £94.0.0. as the rateable value. The respondent claimed that the assessment should be reduced to £67.0.0. gross and £56.0.0. rateable value. The respondent appealed to the Quarter Sessions and it was agreed between the parties that a case should be stated for the opinion of the King's Bench Division. Two questions stated in the case are material for the purposes of the question under consideration here:—

(i) whether the Rent Restriction Act 1920 in its application to the said hereditament is to be taken into account in arriving at the valuation of the said hereditament under and for the purposes of the Valuation of Property (Metropolis) Act 1869;

(ii) whether the highest gross value which can be assigned to and placed upon the said hereditament in the said valuation list for the year 1920 is the standard rent (within the meaning of the Rent Restriction Act 1920) applicable to the said hereditament plus the highest increase or increase of rent provided for and set out in section 2(1)(c) and (d) of the said Act.

The Divisional Court of three Judges answered these questions in the affirmative. The Court of Appeal by a majority of two to one affirmed the decision of the Divisional Court. The House of Lords by a majority of four to one reversed the decision of the Court of Appeal. The *ratio decidendi* in the *Poplar* case, if I may be allowed to reduce to the extreme limits of brevity the weighty speeches and arguments which are set out in the report, was that under the English rating system the rate is a tax on occupiers in respect of their occupation and is not concerned with the landlord or owner's interest. The following passages from the speeches will serve to illustrate the grounds upon which their Lordships were of the opinion that the restrictions on rent imposed by the 1920 Act were not to be taken into consideration in arriving at an assessment of the value of the property for rating purposes. Lord Buckmaster at pages 103, 104 said:

"So far as the occupier is concerned, the provisions of the Rent Restriction Act have not in any way made his occupation less beneficial. It is the landlord who is affected, and he, as landlord, is not the subject of assessment, nor can his interest in the property be considered for the purpose of determining what the assessment should be .....

In my opinion, the rent that the tenant might reasonably be expected to pay is the rent which, *apart from all conditions affecting or limiting its receipt in the hands of the landlord*, would be regarded as a reasonable rent for the tenant who occupied under the conditions which the statute of 1869 imposes;

and Lord Parmoor at page 123 said:

"I am unable to see in what way a statutory restriction on rent payable from a tenant can operate as a statutory restriction on the profit-earning or rent-earning capacity of the "Cobden's Head," or how the value to an occupier is affected or controlled by the fact that a landlord cannot enforce, as against a tenant, a rent higher than the statutory standard rent in operation at the time."

The general trend of the authorities as they stood at the date of the *Poplar* decision is summed up in the words of Lord Buckmaster in *Port of London Authority v. Orsett Union*[13]:

"The actual hereditament of which the hypothetical tenant is to be determined must be the particular hereditament as it stands, with all its privileges, opportunities, and disabilities created or imposed either by its natural position or by the artificial conditions of an Act of Parliament."

The *Poplar* case is distinguishable because the disabilities imposed by the artificial conditions of the Rent Restriction Act do not affect the occupational value of the hereditament to the occupier/ratepayer; they affect only the rent that a landlord can enforce as against a tenant. If, in England, the person liable for the payment of the rates had been the same person whose profit-making interest was impaired by the operation of the Rent Restriction Act, that is to say, the owner, then, as it appears to me, Lord Buckmaster's statement of the law in the *Orsett*

case would inevitably have been applied in the *Poplar* case, with a result contrary to the actual decision.

Turning now to the *Port-of-Spain* case, the *ratio decidendi* is summarised in the headnote as follows:

"That decision (i.e. the decision in the *Poplar* case) has no application in determining the rateable value of premises in Trinidad where, under the relevant provisions of the Port-of-Spain Corporation Ordinance, the rate is borne by the owner, is a charge on the rateable hereditament, and is exigible if there is no occupier. In determining, therefore, the rateable value of such premises regard must be had to the Trinidad Rent Restriction Ordinance, 1941, as amended, which affects the annual rent payable to and exigible by the landlord, and the value of the hereditament for rating purposes is the amount of the 'standard rent' which has been fixed in accordance with the provisions of the Rent Restriction Ordinance."

In delivering the judgment of their Lordships, Lord Somervell of Harrow said:

"It will be seen that the basis of the tax differs from that of rating under English law. Under the latter the rate is imposed upon the occupier. There must be an occupier or there is no rate. Not only is it not imposed on the owner, but it is not a charge on the land. If the rate is not paid the authority's remedy is by distress and sale of the goods of the occupier.

In Trinidad the rate is borne by the owner; it is a charge on the rateable hereditament; it is exigible if there is no occupier.

In the *Poplar* case the Divisional Court and the Court of Appeal by a majority had held that the gross value of a building for rating purposes could not be greater than the standard rent with permitted increases under the Rent Act of 1920.

That decision was reversed, by a majority, in the House of Lords who held that the Act was not to be taken into account. In the opinion of the Board the ratio of that decision is to be found in the English rating system, namely, that the rate is a tax on occupiers in respect of their occupation and is not concerned with the landlord or owner's interest. Lord Buckmaster said: 'So far as the occupier is concerned, the provisions of the Rent Restriction Act have not in any way made his occupation less beneficial. It is the landlord who is affected, and he, as landlord, is not the subject of assessment, nor can his interest in the property be considered for the purpose of determining what that assessment should be.' Lord Sumner and Lord Parmoor emphasize the distinction between occupier and owner for purposes of rating valuation under English law.

In *Rawlance v. Croydon Corporation* the Court of Appeal had to consider the ratio of the *Poplar* case and came to the same conclusion as stated above.

The *Poplar* decision therefore having no application, the Board is clear that, under Trinidad law, regard must be had to the Rent Restriction Ordinance, which affects the annual rent payable to and exigible by the landlord."

For reasons which I have stated in general terms in the earlier part of this judgment I do not think it necessary, but I do think it unwise, to approach the question whether the decision in the *Port-of-Spain* case must be followed, or ought to be followed, by this Court by laying the sections of the Federation Ordinance and of the Trinidad Ordinance side by side and then deciding, by textual comparison, whether the two statutes are *in pari materia* or not. Differences, some more substantial than others and some of policy and others only of form, undoubtedly exist and are manifestly seen when the two statutes are examined and compared. This is not, however, in my opinion, the right way to determine whether the decision in the *Port-of-Spain* case has any application to the present appeals. The safe and proper method of determining this is to take the *ratio decidendi* of the *Port-of-Spain* case and see whether or not the circumstances on which it was based exist in the present case. The passage from the speech of Lord Somervell of Harrow which I have just quoted demonstrates that the factors comprising the *ratio decidendi* of that case are exactly reproduced in the cases under appeal here. Under the Town Boards Enactment (F.M.S. Cap. 137) the rate is a tax upon the owner of the rateable holding. As in Trinidad, so the Control of Rent Ordinance here is a measure which (to use the words of Lord Somervell of Harrow) "affects the annual rent payable to and exigible by the landlord." It is in my view impossible to say that, for the purpose of assessing the extent of the landlord's liability, as owner, for the payment of rates, the rent at which a holding might reasonably be expected to let from year to year can exceed the rent which the landlord is entitled by law to charge. The consideration upon which the House of Lords based the *ratio decidendi* in the *Poplar* case is entirely absent here. I repeat for the sake of emphasis one sentence from Lord Buckmaster's speech in that case which was quoted by Lord Somervell of Harrow in the *Port-of-Spain* case:

"It is the landlord who is affected (i.e. by the Rent Restriction Act), and he, as landlord, is not the subject of assessment, nor can his interest in the property be considered for the purpose of determining what that assessment should be."

Here, however, as in Trinidad, it is the landlord who is the subject of assessment, and if the law does not allow him to charge his tenant more than *X* dollars per annum as the rent of the holding, it seems to me to violate the plain meaning of words to say that that holding might reasonably be expected to let at *X* plus *Y* dollars per annum. If the rent at which a holding might reasonably be expected to let is to be taken as

the quantum of liability for rates, and that liability falls on the owner, how can it be said that the holding might reasonably be expected to let at a rent in excess of that which the owner, as landlord, is permitted by law to charge and which it would be a criminal offence for him to charge? In my opinion the definition of "annual value" in our Enactment has the effect of constraining the rating authority to have regard to statutory limitations on the annual rent exigible by the landlord.

Mr. Das, in the course of his most persuasive and able argument, referred to a number of English cases in which the rateable value of hereditaments subject to rates was held to be the occupational value to a hypothetical tenant. One of these cases is the *Poplar* case, but the expression "hypothetical tenant" was first used in 1859 in *Regina v. West Middlesex Waterworks Co.*[14]. Other cases in which the hypothetical tenant makes his appearance are *Staley v. Castleton Overseers, supra, Regina v. School Board for London,*[15] *Owens College v. Chorlton-upon-Medlock,*[16] *London County Council v. Church Wardens of Parish of Erith and Others*[17] and *Davies v. Seisdon Union.*[18] The clearest statement on the test of occupational value to the hypothetical tenant which I have found in reading these cases is in the speech of Lord Herschell, L.C., in the *Erith* case, *supra*, at page 588 of the report:

> " It has never been doubted that the rent which is actually being paid by the occupier does not necessarily indicate what is the rent which a tenant might reasonably be expected to pay, or that an owner who is in occupation, and who may not be willing to let on any terms, is none the less rateable. The tenant described by the statute has always been spoken of by the Court as 'the hypothetical tenant.' Whether the premises are in the occupation of the owner or not, the question to be answered is: Supposing they were vacant and to let, what rent might reasonably be expected to be obtained for them? So far there can, I think, be no difference of opinion. But then arises the question: Is the owner to be regarded as one of the possible tenants in considering what rent might reasonably be expected? Bearing in mind what was the object of the Legislature in prescribing this test of annual value, I cannot myself entertain any doubt that the owner ought to be thus taken into account."

Although none of these cases, with the exception of the *Poplar* case, appears to have been cited to their Lordships in the *Port-of-Spain* case, the principle which they combine to establish was urged by counsel for the appellants and was very fully argued on both sides; indeed, it may fairly be said that the issue for determination there, as here, was the question whether the principle applies if the person liable to pay the rates is the owner of the rateable hereditament. The Judicial Committee held, in effect, that *because* in Trinidad the rates are payable by the owner the *ratio decidendi* of the *Poplar* case does not apply. The arguments put forward in the *Port-of-Spain* case have been so closely reproduced, and the issue for determination in that case is so exactly reflected, in the appeals before me here that it appears to me to be impossible *not* to follow the *Port-of-Spain* decision. In answer to that, the respondent says: "That is all very well, but we have demonstrated that in a number of vital respects the Trinidad Rent Restriction Ordinance and our Control of Rent Ordinance are entirely different." With the word "vital," which Mr. Das used in this context, I must disagree so far as the question in the present appeals is concerned. What *is* vital is the presence, in our legislation, of that factor which forms the fundamental distinction between Trinidad law and English law, namely, the liability of the owner for payment of the rates.

Before finally determining the question in the appeals before me, it is necessary to consider whether the *Port-of-Spain* case applies to every one of the three categories A(i), A(iii) and A(iv). There may, at first sight, appear to be some force in the argument that a distinction should be drawn, in assessing annual value, between premises which are let to a tenant and premises which are occupied by the owner. It might be thought that since the *ratio decidendi* of the *Port-of-Spain* case was that the owner, and not, as in England, the occupier, is liable to pay the rates, the decision ought not to be extended to cases where the owner is also the occupier, and that the English doctrine, which equates the rateable value to the value of the benefit which would be enjoyed by a hypothetical tenant (which includes the owner where he is also the occupier), should be applied in such cases. In this connection one of the differences pointed out by Mr. Das between the Trinidad Rent Restriction Ordinance and our Control of Rent Ordinance must be examined.

In England, if a dwelling-house has never been let, the first letting establishes the standard rent, not merely between the parties but against all persons; the Acts operate *in rem* and not merely *in personam*, and the standard rent attaches to the house, not to the tenancy (*Megarry* on the Rent Acts, 8th Edition, p. 307). But it is not so in Trinidad or in the Federation. In Trinidad, a landlord intending to let for the

first time is under a statutory duty, imposed upon him by section 8(2) of the Ordinance, to apply to the Board before the commencement of the tenancy to fix the "provisional standard rent". Mr. Das pointed out that no such duty is imposed upon the landlord by our Ordinance. Under our Ordinance, which, subject to certain exceptions set out in the definition of "premises" in section 2, applies to buildings which were completed on or before 31st January, 1948, the standard rent is either the rent at which the premises were let on 25th September, 1940, or, if they were then unlet, unoccupied or unbuilt, the rent at which they were first let after that date, subject to the proviso that where the premises were first let between 25th September, 1940, and 5th September, 1945, the Board may determine the rent at which in its opinion the premises would have been let on 25th September, 1940, if they had then been let. The Board is empowered by section 8(1) "to hear and determine *any application* for the purpose of fixing the maximum recoverable rent of any premises", and section 8(3) provides the method by which the Board may determine the maximum recoverable rent of premises which were first let after 25th September, 1940. In spite, therefore, of the absence of any provision in our Ordinance imposing a duty on the landlord to apply to the Board to fix the standard rent in respect of a letting of premises which have not previously been let, the machinery for fixing it, and the principles upon which it is to be fixed, have been provided for; and under section 8(2) any landlord or tenant or other person interested may apply to the Board for an order fixing the rent in respect of the tenancy of premises of which he is landlord or tenant or in which he is interested.

A difficulty arises, however, when we come to consider how the maximum recoverable rent of premises, which are occupied in whole or in part by the owner, is to be ascertained if the premises have never been let, or wholly let, and the owner has no intention of letting the whole of the premises, or any part of the premises other than that which has been previously let, as the case may be. Neither in Trinidad nor in the Federation is any provision made for fixing the maximum recoverable rent in the abstract. It is not open to the owner of premises to apply to the Board for a declaration as to what the maximum recoverable rent would be if the premises were let. In Trinidad, an application may be made to the Board by a landlord, a tenant, or a person "proposing to let", but not by an owner who does not propose to let. In the Federation, application may be made by a landlord, a tenant, or any "other person interested", but only "in respect of the tenancy"; if no tenancy exists, no application can be made to the Board to fix the standard rent. The absence of any provision for fixing or ascertaining abstract rents might appear to exclude from the effect of the rent restriction legislation, for the purpose of arriving at the annual value, those premises, or part-premises, the owners of which are in occupation and have no intention of letting. But this is not so. That the difficulty was present to their Lordships' minds in the *Port-of-Spain* case is shown by the words of Lord Somervell of Harrow at pages 399 – 400 of the report:

> "Their Lordships were invited to give guidance as to how in different cases regard should be had to the Rent Restriction code. In cases where the standard rent with any permitted increases has been, as here, fixed by a board, the question is simple. If there has been no determination by the board, or if it is submitted that a further application could be made to the board, there would appear to be no great difficulty once it is clear, as it is, that the hypothetical tenant is subject to the restrictions. There may be cases where the Court dealing with a valuation might think it right to adjourn pending an application to the board. That would depend on circumstances and would be a matter for the Court. *There will be other cases in which the Court dealing with the rateable value will have itself to make an estimate of the figure which the board would fix. A simple example is that of premises which the owner has never let and does not intend to let.*"

The *ratio decidendi* of the case applies, therefore, to the assessment of annual value of premises in all the three categories of appeals which are before me. It could hardly be otherwise, for it is obvious, if one looks again at the definition of annual value — "the rent at which the holding might reasonably be expected to let" — that it provides a measure which can and must be applied whether the premises are let to a tenant or occupied by the owner. The difficulty, which is a practical and not a legal one, arises from the absence of machinery for determining the maximum recoverable rent of premises which have never been let. In such cases, the Town Council must seek to arrive at a reasonable estimate of the figure at which the rent of the premises would be controlled if they were let. This may increase the burden on the Assessment Committee, but there appears to be no alternative as the law stands. Dissatisfied ratepayers have the solace of a right of appeal to the Court on the quantum of the assessment.

For the reasons which I have stated I am of the opinion that the *Port-of-Spain* decision applies here, and I am bound to follow it; which, if I may be permitted to say so with respect, I would have no hesitation in doing even if I were not bound by it.

I therefore hold that in assessing the annual value of holdings to which Part IV of the Town Boards Enactment applies — which include all holdings the assessment of which is in question in the appeals in Categories A(i), A(iii) and A(iv) — the rating authority must have regard to the effect of the Control of Rent Ordinance, 1956, upon the annual rent exigible by the landlord in respect of any such building.

Finally, I am called upon to decide Civil Appeal No. 227 of 1957 to which I have already referred as a special case. This case is peculiar by reason of the fact that there is a restrictive condition on the title, and I am asked to decide whether the existence of such a condition must be taken into account in assessing the annual value. This question was not referred to in the grounds of appeal originally filed nor was any application made to amend the petition of appeal, but I have been asked by Counsel for the appellant with the consent of Counsel for the respondent to treat this question as if it formed one of the grounds of appeal in this particular case. I was not told what the restrictive condition is which attaches to the appellant's title. I have merely been asked to give a declaratory judgment *'in vacuo'*.

It is a question of fact whether the restrictive condition affects the rent at which the holding may reasonably be expected to let from year to year. The law is stated by Lord Buckmaster in *Port of London Authority v. Orsett Union, supra,* in the passage already quoted. *Ryde* on Rating, 10th Edition, at page 268 in commenting on Lord Buckmaster's statement says:

"Lord Buckmaster's statement of the law was in relation to the effect of a statutory restriction upon profits, ... but it lays down a principle equally applicable to all hereditaments. In the ordinary course, however, restrictive covenants or other special arrangements between a landlord and his tenant are irrelevant in the ascertainment of net annual value. This follows from the rule that the hereditament is at the date of valuation deemed to be vacant and to let on the statutory terms. Private arrangements, therefore, between an actual owner and an actual tenant cannot affect the hypothetical tenant. On the other hand every potential hypothetical tenant must be affected by statutory powers or obligations which are attached to the hereditament in whosesoever hands it may be."

The authorities cited by the learned author of *Ryde* on Rating in support of the propositions in his commentary are unfortunately not available here. The law on the point can, however, readily and clearly be inferred from the words of Lord Buckmaster which I have quoted above. The operative words for the purpose of answering the question before me are, "created or imposed either by its natural position or by the artificial conditions of an Act of Parliament", from which it follows that restrictions created or imposed by statute are to be taken into consideration but restrictions created or imposed by contract between a landlord and tenant are not.

In *West Bromwich School Board v. West Bromwich Overseers*[19] Bowen, L.J., said:

"If land is by law struck with sterility when in any and every body's hands, so that no profit can be derived from the occupation of it, it cannot be rated to the relief of the poor."

This seems to have been the first occasion when the expression "struck with sterility" was used, although it has recurred in a line of cases after that date. The concept was, however, present in *Staley v. Castleton Overseers, supra,* and in *Jones v. Mersey Docks*[20] and was considered at length in the *Erith* case, *supra.* The case of *Mayor of Burton-upon-Trent v. Burton-upon-Trent Union*[21] may appear to have overruled or modified the application of the principle. In that case the Court held that in fixing the measure of rateable value of a pumping-station the value of the pumping-station to the actual occupier must be substituted for the value to other occupiers using the station in a different way. Special features existed in that case, however, which distinguish it from the cases establishing the general principle.

Any restriction on the user of the holding is necessarily capable of affecting, in a disadvantageous sense, the rent which the owner may reasonably be expected to obtain from a tenant. The holding, even if it is under the disability of a restriction on user, may suit the purposes of a particular tenant so that the rent which that tenant is willing to pay for his occupation may not be affected at all. It is not, however, the rent at which the holding is in fact let which is to be taken as the test of annual value but the rent at which it might reasonably be expected to let from year to year, and since it is here the owner who is liable for the rates, I consider that if this particular holding is subject to a restriction on user imposed by or under a statute (for example, an express condition imposed by the Ruler-in-Council under

section 34 of the Land Code), then the rating authority, in assessing the annual value, must have regard to the effect of that condition upon the rent at which the holding might reasonably be expected to let to a hypothetical tenant from year to year.

Since the appeals before me have been brought in order to obtain a declaratory statement of the law, I am not in a position to exercise the ordinary powers of the Court on the hearing of an appeal which would include the substitution, in appropriate cases, of a reduced assessment for the assessment made by the Town Council. The only order which I am able to make, and I make it accordingly, is that the cases of all the appellants in Categories A(i), A(iii) and A(iv), including the special case No. 227 of 1957, be referred back to the Town Council for reconsideration of the assessments in the light of the declaratory judgment which I have given.

By consent there will be no order for costs.

Order accordingly.

Solicitors: *Chabra & Dharmananda; Cheang Lee & Ong; Das & Co.*

MANAP BIN ALI v. PUBLIC PROSECUTOR

[C.A. (Hill Ag. C.J., Good and Neal JJ.) July 23, 1958]

[K.L. — F.M. Criminal Appeal No. 7 of 1958]

Criminal Law and Procedure — Murder trial — Summing-up to jury — Non-direction — Effect of.

It is settled law that in summing-up in a murder case a trial Judge must direct the jury regarding the ingredients of the offence of murder, and if he does not do so, the absence of such a direction must be fatal to a conviction.

Case referred to:—

(1) *Hashim bin Mat Isa v. Public Prosecutor*, (1950) M.L.J. 94.

COURT OF APPEAL (Appeal from Johore Bahru).

Paul Wong for the appellant.

Mohd. Salleh bin Abas (Federal Counsel) for the respondent.

The judgment of the Court was delivered by —

Hill Ag. C.J.: — The appellant had been convicted of murder and sentenced to death.

In his summing-up to the jury the learned trial Judge stated "I am not going to bother you with the definition of murder, because the issue in this case is quite clear." It is settled law (see the judgment of the Court of Appeal in *Hashim bin Mat Isa v. Public Prosecutor*[1]) that in summing-up in a murder case a trial Judge must direct the jury regarding the ingredients of the offence of murder, and if he does not do so, the absence of such a direction must be fatal to a conviction.

In this case too there was a total and complete failure on the part of the trial Judge to give any such direction. For this reason we quashed the conviction and sentence and ordered a new trial.

The other grounds of appeal were not considered.

New trial ordered.

Solicitor: *Paul Wong Mun Yong.*